

## **THE CARIBBEAN COURT OF JUSTICE : AN IMMINENT FORETHOUGHT**

By Tecla Fontenard

When the Caribbean Court of Justice (CCJ) is inaugurated on April 16, in Trinidad and Tobago, it will bring one era to a close and usher in another.

The Court, which has been the subject of much debate among CARICOM citizens, politicians, the business sector, students, lawyers, and others, is an age-old idea that dates as far back as 1901 when an editorial in the Jamaica Gleaner put forward the view that the Privy Council should be renounced, and replaced with a Caribbean Court that is better placed to pronounce on matters of final appeal.

Forty-six after the editorial, in 1947, reports indicate that a meeting of Governors of Caribbean countries discussed the matter of the need to establish a court that was within easier access and in keeping with the spirit of Caribbean people. The governors knew even then that sovereignty came with a right to self-determination - a right that is manifested in political as well as psychological independence - and has both legislative and judicial aspects.

Following the governors' discussion in the late 1940's, little seemed to have happened to propel the making of the Regional Court - at least there is no documentation reflecting any significant developments.

The Caribbean countries were preoccupied with seeking independence from Britain, building confidence in the natives in developing towards a sense of nationalism and shifting their economies.

Albeit, plans for a Regional indigenous Court were not being pressed, but the need for collective planning and problem-solving was being explored as it was thought that individual countries, given their small economies, would be at social, economic and political disadvantages.

The Court was but one of many examples of the quest for an independent Caribbean, free of colonial bondage.

Two decades elapsed, and then once again in April 1970, the debate on the establishment of a court of last resort for the Caribbean began. It was the Prime Minister of Jamaica, Hon. Edward Seaga, who put forward a Resolution at the 16th Meeting of the Heads Of Government of CARICOM in Kingston.

The period that followed was painstakingly snail-paced, witnessing variances of less debates on the one hand and more intense at others with several legal minds stating positions in favour of a Caribbean Court of final appellate jurisdiction.

In evaluating its intrinsic worth, the intellectuals, who wrote then, between the 1970s and late 1980s, contended that the court would represent true independence, maturity, and the

ability of the Caribbean to manage its own affairs. It would also be yet another institution exemplifying deeper regional integration among CARICOM States.

The handling of legal matters is a fundamental aspect of the functioning of a state, one that requires the responsibility to formulate, maintain, impose and interpret the law. It is therefore small wonder that proponents of the Court have long held the view that for as long as cases are deferred to the British Privy Council, the Caribbean has not fully grown and part of its identity is not wholly realized.

By the late 80s into the 90s, talks of a regional Court began to intensify. Hugh Rawlins, Author of the booklet, "The CCJ: the History and Analysis of the Debate" described it as "the most dynamic period."

In 1987, during the Conference of Heads of Government in Trinidad and Tobago, the topic of the Court re-emerged and Caribbean leaders gave a mandate to Caribbean Attorneys-General to consider the replacement of the Privy Council with a Caribbean Court of Appeal.

At the following Meeting of the Conference in 1988, a proposal for the establishment of the CCJ was made as mandated.

The Court, it was argued, was necessary in order to "fulfill political sovereignty by providing for an indigenous institution; allowing for a system of jurisprudence, which takes into account the circumstances of our society and the aspirations of our people, and making justice more affordable to the people."

The Meeting agreed to take urgent action to expedite the establishment of the Court. That followed the historic decision at Grande Anse in 1989, to create "a Regional Court with Appellate jurisdiction for criminal and civil matters to replace the Privy Council and Original jurisdiction to resolve disputes among Member States".

In the estimation of the Heads, the Court would reflect the general thrust of creating a deeper regional integration movement and would be a fundamental part of the smooth functioning of the CSME.

In the sixteen-year period that followed, up to inauguration in 2005, the Caribbean began to prepare for the Court's establishment. With the Grande Anse Meeting, also setting the stage for the creation of the CARICOM Single Market and Economy, (CSME) the Region was on its way to determining its future, fulfilling the aspirations of its peoples and taking full command of its legal system.

The dynamism that characterized the period since that 1989 decision was one of intense emotional and political debates, in favour of and in disagreement; as well as one of perseverance and preparation on one hand and resistance on the other. The 1990s in particular saw a proliferation of papers and publications, protests, House debates, speeches, and intellectual essentials such as the document, "A Time for Action", in which

the West Indian Commissioners affirmed that a Caribbean Court of Appeal was most appropriate as it was likely to attract a larger number of appeals, and manned by West Indian jurists, would be capable of handing down better judgment on Caribbean cases.

The Caribbean Court of Justice, is therefore not an after- thought, as has been implied, but signals the end of a fifty-year process, and begets a new phase - one of transformation and growth that is crafted to respond to the times, while giving due rights and opportunities to the Region's citizens.